APPENDIX A.

[Title of District Court and Cause.]

Pre-Trial Stipulation.

(Plaintiff's Exhibit 50.)

STIPULATION OF FACTS.

IT IS HEREBY STIPULATED by and between the parties hereto, through their respective counsel of record, that the following facts are true and may be taken by the Court as true for the purposes of this action, subject, however, to such objections, reservations or limitations as are hereinafter specified by the respective parties hereto in Section III of this Pre-Trial Stipulation, and subject further to the right of either party hereto to introduce at the trial of this action other evidence not inconsistent with the facts herein stipulated:

1. In this action plaintiff claims that defendant wrongfully failed to reemploy him after his discharge from the armed forces of the United States, in asserted violation of his rights under the Selective Service Act of 1940 (50 U. S. C. App. Sec. 308) and the Service Extension Act of 1941 (50 U. S. C. App. Sec 357). He seeks, (a) an order that he be reinstated in the employ of the defendant and, (b) a judgment for damages in the amount of $200,000.

2. Defendant is a corporation duly organized and existing under the laws of the State of California and defendant maintains a place of business at 2209 Santa Fe Avenue, City of Los Angeles, State of California. Defendant is engaged in the business of manufacturing and selling hand tools and related items.

3. In November 1942, and for approximately nine years prior thereto, plaintiff was authorized as a manufacturer's representative to sell merchandise of defendant on a commission basis in the following territory: the states of Kansas, Iowa, Minnesota and Missouri; Nebraska (east of the extension of the Colorado eastern boundary); the following counties in the State of South Dakota: Brown, Beadle, Sanborn and Bonhemme; and the City of Rock Island, Illinois.

4. In November 1942 plaintiff terminated his said relationship with defendant in order to perform military training and service in the armed forces of the United States, and plaintiff thereupon entered upon active naval service in the naval forces of the United States and served continuously thereafter in such naval service on active duty until November 15, 1945, at which time plaintiff was relieved from such training and service and was ordered released from active duty.

5. Immediately prior to plaintiff's entry upon active naval service as aforesaid, plaintiff was engaged in the sale of dependant's products on a commission basis as stated in paragraph 3 above under and pursuant to a certain agreement in writing between plaintiff and defendant executed by plaintiff on January 18, 1941, as amended by a supplemental territorial agreement dated February 1, 1941, and executed by plaintiff on March 19, 1941, by an extension agreement dated December 8, 1941, and executed by plaintiff on December 16, 1941, and by supplemental agreements dated respectively April 22, 1942, and September 23, 1942.

6. During the entire period from January 1, 1941, to November 1942 covered by the aforesaid written agreement, as amended and extended:

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(a) Defendant did not furnish plaintiff with an office and did not pay or reimburse plaintiff for any office expenses.

(b) Plaintiff as a manufacturer's representative represented other manufacturers in addition to defendant and was authorized to and did sell on a commission basis the products and merchandise of other manufacturers in addition to those of defendant. During the period from January 1, 1941, to November 1942, plaintiff so represented the following other manufacturers:

Wohlert Corporation, Lansing, Michigan;

Powell Muffler Company, Utica, New York;

Eis Automotive Corp., Middletown, Connecticut;

Pep Manufacturing Co., New York, New York;

National Motor Bearings, Oakland, California; and

Precision Parts Manufacturing Co., Chicago, Illinois.

(c) During said period from January 1, 1941, to November 1942, plaintiff received $26,072.16 from defendant as compensation for his sales of defendant's products, and during the same period plaintiff received from other manufacturers $20,244.49 as compensation for the sale of the products and merchandise of such other manufacturers.

(d) With the exceptions noted below, plaintiff paid his own expenses in connection with his activities as such manufacturer's representative in selling defendant's products and those of other manufacturers represented by him, and in connection therewith plaintiff hired and paid with his own funds one assistant who was chosen by plaintiff and who acted pursuant to plaintiff's directions. Defendant, in January 1941, paid plaintiff $30 in partial reimbursement of his expenses in attending an Automotive

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Service Industry Convention. Defendant made available to plaintiff a display truck owned by defendant, and in December 1941, defendant paid plaintiff $200 for repairs and tires for said truck.

(e) In the conduct of his business as such manufacturer's representative, plaintiff chose his own customers to whom he sold or attempted to sell products of defendant and determined his own itineraries in calling upon customers and prospective customers. Plaintiff was requested by defendant to make reports to defendant concerning such itineraries and calls, but plaintiff did not follow any regular reporting plan as requested. Defendant from time to time furnished to plaintiff names of prospective customers in plaintiff's territory from whom defendant received inquires, and plaintiff reported to defendant regarding the same.

(f) Defendant made no deductions from commissions paid or payable to plaintiff by it for or on account of Social Security taxes, old age benefits or unemployment insurance.

(g) Plaintiff made no investment in a stock of defendant's merchandise. In addition to its stock in Los Angeles, defendant maintained and paid the storage charges on a stock of merchandise in Kansas City from which customers in plaintiff's territory were supplied insofar as possible.

(h) Defendant had the final authority on extension of credit to customers, and in specific instances from time to time defendant requested plaintiff to report to it upon his activities in collecting past due accounts.

7. On November 15, 1945, plaintiff was placed on inactive duty by the United States Navy with a certificate of

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satisfactory service, and his terminal leave expired December 29, 1945.

8. During the month of January 1946 and within ninety days after plaintiff was released from training and service in the naval forces of the United States, plaintiff made application to defendant for renewal of his prewar status as a manufacturer's representative selling defendant's products as hereinabove described in Paragraphs 3 and 5 hereof, but upon such application defendant refused to renew plaintiff's said prewar status.

9. In January 1946 when plaintiff requested renewal of his prewar status with defendant, defendant had revised the geographical limits of its sales territories, and the State of Minnesota and all counties in the State of South Dakota had been eliminated from the territory in which plaintiff formerly had been authorized to sell defendant's products. At that time, the sales of defendant's products in such reduced territory were being handled by two full-time salesmen employed by defendant, which salesmen handled the sale of no products other than those of the defendant and its subsidiary corporations, P & C Hand Forged Tool Co. and Penens Corporation. Defendant had theretofore determined that the employment of full-time salesmen in said territory as aforesaid was necessary by reason of the increase in the volume of defendant's business and in the number of its customers.

10. In January 1946 when plaintiff applied for renewal of his prewar status, defendant offered plaintiff a position as an employee of defendant, selling exclusively the products of the defendant and its subsidiary corporations, P & C Hand Forged Tool Co. and Penens Corporation, either (a) in the territory in which plaintiff had been previously

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authorized to sell defendant's products on a commission basis, as such territory had been revised as aforesaid, or (b) in the "Chicago territory" which then consisted of the State of Illinois and portions of the States of Indiana, Michigan and Wisconsin. Plaintiff had, prior to his military service, handled and sold products of said subsidiary corporations only in cases where such subsidiaries had made tools for defendant on special orders, and only as a manufacturer's representative for defendant. Plaintiff was informed that if he accepted either of the foregoing proposals it would be necessary for plaintiff to work for defendant exclusively as set forth above and to cease to represent other manufacturers as he had done prior to the war.

11. During the month of January 1946, plaintiff advised defendant that he was unwilling to sever his connections with other manufacturers and was therefore unwilling to accept either of the positions offered him by defendant.

12. Thereafter and during the month of March 1946 plaintiff took up with the Selective Service System the matter of his claim for reinstatement with defendant.

13. Plaintiff was informed that the Office of the Director of Selective Service for the State of California had conferred and corresponded with defendant during or about the months of August, September and October 1946 regarding plaintiff's claim for reinstatement, and that the defendant refused to renew plaintiff's prewar status.

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14. The United States Attorney in Chicago, Illinois did not file suit against defendant on behalf of plaintiff to enforce plaintiff's claim for reinstatement, and turned the file concerning such claim over to plaintiff in February 1948.

15. During or about February, 1948 plaintiff consulted the law firm of Arvey, Hodes and Mantyband of One La Salle Street, Chicago, Illinois, regarding the plaintiff's claim for reinstatement.

16. On or about November 4, 1948, the law firm of O'Melveny & Myers of 433 South Spring Street, Los Angeles, California, as attorneys for defendant, in a letter sent to said firm of Arvey, Hodes and Mantynband, rejected, on behalf of defendant, plaintiff's said claim for reinstatement, and the contents of such letter were made known to the plaintiff on or before December 1, 1948.

17. An action was filed by plaintiff against defendant in the United States District Court for the Northern District of Illinois on or about July 22, 1949, to enforce plaintiff's asserted right to reinstatement, which action was dismissed without prejudice on or about September 20, 1949, for want of jurisdiction over defendant in the Northern District of Illinois.

18. The geographical limits of the territory in which plaintiff formerly had been authorized to sell defendant's products have been further revised from time to time since January, 1946 and such territory now comprises the States of Kansas and Missouri, that portion of Nebraska east of the extension of the Colorado eastern border, cer-

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tain counties in Illinois, and all of Iowa except certain counties therein. Each of the areas eliminated from time to time from said territory has been made a part of another of defendant's sales territories.

19. At the present time three salesmen employed by defendant are handling the sale of defendant's products in the territory referred to in the preceding paragraph. At all times since January, 1946 the sales of defendant's products in plaintiff's former territory have been handled by at least two salesmen employed by defendant, and during one period since that date four salesmen were employed by defendant to handle such sales in said territory; and at all such times such salesmen have handled the sale of no products other than those of defendant and its said subsidiary corporations.

20. During the period from January, 1946 to September 22, 1949, the date of the commencement of this action, defendant has paid large and substantial sums of money to salesmen employees as compensation for selling defendant's products in the territory in which plaintiff was formerly authorized to sell such products.

21. During the period from the date of plaintiff's release from the naval forces of the United States in December of 1945 to January 23, 1950, plaintiff rendered services to the following firms or corporations in the sale of their products, during the respective periods specified below and received from said respective firms or corporations as compensation for personal services the respective amounts set forth below:

Names and Addresses	Date of Employment	Gross Receipts
Wohlert Corporation Lansing, Michigan	Jan. 1, 1946, to date	$51,040.67
Eis Automotive Corp. Middletown, Conn.	Jan. 1, 1946, to date	20,606.55
Powell Muffler Company Utica, New York	Jan. 1, 1946, to date	5,090.29
Precision Universal Joint Co., Chicago, Illinois	Jan. 1, 1946, to Nov. 1947	1,334.00
Pep Manufacturing Co., New York, New York	Jan. 1, 1946, to Feb. 1949	1,836.71
Warehousing Service Co., Chicago, Illinois	Jan. 1, 1947, to March 1949	1,925.24
Hygrade Products Co., New York, New York	March 1947, to January 1948	1,054.36
U. S. Axle Company Pottstown, Pa.	Jan. 1946, to date	2,305.59
Buell Mfg. Company Chicago, Illinois	April 1948, to date	4,597.65
Bingham Herbrand Corp. Fremont, Ohio	March 1949, to date	1,757.99
TOTAL GROSS RECEIPTS		$91,549.05
Less Commissions to other salesmen		7,787.60
RECEIPTS		$83,761.45

The phrase "to date" in the foregoing tabulation refers to the date of January 23, 1950.